

AGREEMENT NUMBER

REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

CALIFORNIA BUSINESS, TRANSPORTATION AND HOUSING AGENCY

CONTRACTOR'S NAME

2. The term of this **November 1, 2006 through October 31, 2009**
Agreement is:

3. The maximum amount
of this Agreement is:

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

EXHIBIT A – SCOPE OF WORK	5 page(s)
EXHIBIT B – BUDGET DETAIL AND PAYMENT PROVISIONS	3 page(s)
EXHIBIT B, ATTACHMENT 1 – BUDGET	1 page(s)
EXHIBIT C – GENERAL TERMS AND CONDITIONS	8 page(s)
EXHIBIT C, ATTACHMENT 1 – CONTRACTOR CERTIFICATION CLAUSES	2 page(s)
EXHIBIT C, ATTACHMENT 2 – DOING BUSINESS WITH THE STATE OF CALIFORNIA	3 page(s)

Check mark one item below as Exhibit D:

☒
☐

EXHIBIT - D SPECIAL TERMS AND CONDITIONS (Attached hereto as part of this agreement)
EXHIBIT - D* SPECIAL TERMS AND CONDITIONS

5 page(s)

EXHIBIT E – RESUMES

1 page

EXHIBIT E, ATTACHMENT 1 – TRUST ADVISORY TEAM

3 pages

Items shown with an Asterisk (), are hereby incorporated by reference and made part of this agreement as if attached hereto.
These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language*

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

California Business, Transportation and Housing Agency

BY (Authorized Signature)

DATE SIGNED(Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Sunne Wright McPeak, Secretary

ADDRESS

980 Ninth Street, Suite 2450; Sacramento, CA 95814

**California Department of General
Services Use Only**

EXHIBIT A

SCOPE OF WORK

1. PURPOSE

WHEREAS, Corporations Code § 14030 established the California Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to a lending institution or financial company that will act as trustee of the funds.

WHEREAS, Corporations Code § 14038 (a) authorizes that the funds in the expansion fund shall be paid out to trust fund accounts by the Treasurer on warrants drawn by the Controller and requisitioned by the office, pursuant to the purposes of this chapter. The office may transfer funds allocated from the expansion fund to accounts, established solely to receive the funds, in lending institutions designated by the office to act as trustee.

WHEREAS, the Contractor agrees to perform the trust services for the Trust Fund;

NOW THEREFORE, the parties agree as follows:

2. DEFINITION OF TERMS

Capitalized terms as used in this Agreement have the following definitions:

- A. "Agreement" refers to this Agreement, number [REDACTED].
- B. "Contract Manager" refers to the person on behalf of the State that shall have overall responsibility to administer and evaluate the work of the Contractor during the term of this Agreement.
- C. "Contractor" means the [REDACTED].
- D. "Corporation" means a nonprofit California small business financial development corporation as defined in Corporations Code § 14010(a).
- E. "DGS" means the California Department of General Services.
- F. "DVBE" means Disabled Veteran Business Enterprise.
- G. "Expiration" means the expiration, termination or cancellation of this Agreement.
- H. "Farm Service Agency" means the U.S. Department of Agriculture, Farm Service Agency.
- I. "State" means the California Business, Transportation and Housing Agency.

EXHIBIT A (continued)

2. DEFINITION OF TERMS (continued)

- J. "SBLGP" means the Small Business Loan Guarantee Program.
- K. "Trust Fund" means the money from the expansion fund that is held in trust by a financial institution or a financial company. A trust fund is not a deposit of state funds and is not subject to the requirements of § 16506 of the Government Code.
- L. "Trust Fund Account" means an account within the Trust Fund that is allocated to a particular small business financial development corporation for the purpose of paying loan defaults and claims on bond guarantees for a specific small business financial development corporation.

3. COMMUNICATION

- A. **Glenn Stober** shall be the Contract Manager for this Agreement.
- B. All official communications from the Contractor to the State, except as provided in paragraph 6 of Exhibit C, shall be directed to the attention of the Contract Manager or designee at the following address, phone/fax numbers or e-mail address:

California Business, Transportation and Housing Agency
Small Business Loan Guarantee Program
980 Ninth Street, Suite 2450
Sacramento, CA 95814

Phone 916-324-9538 Fax 916-323-5440
E-mail: gstober@bth.ca.gov

- C. All official communications and payments from the State to the Contractor shall be directed to the attention of [REDACTED] or designee at the following address, phone/fax numbers or e-mail address:

[REDACTED]
[REDACTED]
[REDACTED]
Phone [REDACTED] Fax [REDACTED]
E-mail: [REDACTED]

EXHIBIT A (continued)

4. CONTRACTOR'S RESPONSIBILITIES

A. ESTABLISHMENT OF TRUST FUND

Monies contained within the Trust Fund are transferred to the Contractor, in trust with the State as the beneficiary, for the purpose of investing such funds. The Contractor shall provide complete trust services for the Trust Fund as specified herein.

B. INVESTMENT OF THE TRUST FUND

- 1) The Trust Fund held by the Contractor shall be invested by the Contractor only in the following:
 - a) Contractor's money market mutual fund;
 - b) U.S. treasury notes and bills; and,
 - c) Investments backed by the "full faith and credit" of the United States Government, except for any investments issued by Contractor, other than as set forth in paragraph 4.B.1)a of this Exhibit.
 - d) Certificates of Deposits.
- 2) The State certifies that each of the investment types listed in paragraph 4.B.1 of this Exhibit is a legal investment for the Trust Fund Account, and the Contractor is authorized to rely on the State's certification as to the legality of such investment.
- 3) The Contractor shall be authorized to invest up to one third (1/3) of each Trust Fund Account, as directed by the Corporation, only in certificates of deposits which meet both of the following requirements:
 - a) They are issued by banks and savings and loans associations in which State funds may be deposited pursuant to Government Code § 16500.5; and,
 - b) They are insured by the Federal Deposit Insurance Corporation.
- 4) The total aggregate amount of certificates of deposits outstanding at any one time from any one bank or savings and loan association shall not exceed \$100,000. The Contractor shall not permit the one-third (1/3) investment limit described in paragraph 4.B.3 of this Exhibit to be exceeded. The State shall provide the Contractor with a list and a sample signature of each representative of each Corporation authorized to direct such investment.

EXHIBIT A (continued)

4. CONTRACTOR'S RESPONSIBILITIES (continued)

- 5) In accordance with Corporations Code § 14070(c), SBLGP shall authorize disbursements in writing, pursuant to paragraph 4.D.2 of this Exhibit, from the Trust Fund to purchase loans made by the Corporations. These loans are normally guaranteed by the Farm Service Agency. The Contractor shall receive instructions from the Corporations regarding disbursements, repayments and other transactions on these loans. So long as the Corporations' instructions are within the written disbursement authorizations given by SBLGP to the Contractor, the Contractor shall make disbursements to and receive payments from the Corporations as ordered or paid by the Corporations. The Contractor shall further maintain complete and accurate records on transactions and balances related to these individual loans, provided that the Contractor is furnished timely information from the Corporations as to all payments made and received with respect to each such loan.
- 6) All investments shall be held by the Contractor and shall be made and held on behalf of the State. The Contractor may hold securities in its own vault or the vault of its affiliate; registered in the name of its nominee or the nominee of its affiliate; or where securities are eligible for deposit in a central depository such as the Depository Trust Company and The Federal Reserve Bank of New York. The Contractor may utilize any such depository and permit the registration of registered securities in the name of its nominee, and the Contractor and the nominee shall be held harmless from any liability as holders of records.

C. REPORTS AND STATEMENTS

- 1) The Contractor shall provide to the State, within fifteen (15) days of the end of each calendar month, a report indicating the investments of each Trust Fund Account.
- 2) The report shall show the monthly beginning balance, accounts holding money market vehicle; amounts invested indicating type of investment, deposits received from the State, income and withdrawals. Additionally, the Contractor will periodically issue reports identifying the investment performance for the managed accounts.
- 3) The report shall also include such other items as may be mutually agreed upon by the parties.

EXHIBIT A (continued)

4. CONTRACTOR'S RESPONSIBILITIES (continued)

D. WITHDRAWAL OF FUNDS FROM THE TRUST FUND

- 1) Funds shall be withdrawn by the Contractor from the Trust Fund, only to fund loans as provided in paragraph 4.B.5 of this Exhibit, upon the prior written approval of authorized representatives of the State and as provided in the third sentence of this paragraph. The Contractor shall not be held liable for relying upon a request for withdrawal pursuant to a written request signed by the authorized representative of the State. Withdrawals may include payments to the Corporations for administrative expenses, loan guarantee payments (defaults) and disbursements on farm loans.
- 2) Funds may be withdrawn by the State from the Trust Fund upon providing written demand to the Contractor. The written demand provided to the Contractor must be signed by at least one of the following State representatives: 1) Contract Manager/Manager of the SBLGP or the 2) Assistant Secretary of the BTH, Commerce and Trade Program.
- 3) The State shall provide the Contractor with signature samples of the State representatives authorized to request disbursements of Trust Fund monies.

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. BUDGET CONTINGENCY CLAUSE

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for this Agreement, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this Agreement, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an amendment to this Agreement to the Contractor to reflect the reduced amount.

2. BUDGET REQUIREMENTS

- A. State resources, not to exceed the Agreement amount, shall constitute the maximum liability of the State to support the Contractor under this Agreement as specified in Attachment 1 of this Exhibit.
- B. The consideration to be paid the Contractor, as specified in Attachment 1 of this Exhibit, shall be compensation for all of the Contractor's expenses pursuant to this Agreement, including, but not limited to, labor, employee fringe benefits, operating expenses, overhead, employer taxes and insurance, subcontracting services, out-of-pocket expenses for travel and subsistence, and taxes due on equipment.
- C. The Contractor shall not receive additional compensation for reimbursement or for costs not identified in Attachment 1 of this Exhibit and shall not decrease the work to compensate therefore.

3. INVOICING AND PAYMENT

- A. In no event shall the Contractor charge fees to the State for obligations entered into or for costs incurred prior to the commencement date or after the Expiration of this Agreement.
- B. For services satisfactorily rendered, and upon the State's receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the Contractor Fee specified in Attachment 1 of this Exhibit.

3. INVOICING AND PAYMENT (continued)

C. The Contractor may submit, in arrears, not more than quarterly, an invoice to the State. The invoice shall be consistent with the amounts determined by Attachment 1 of this Exhibit. Requests for Contractor's fees shall be substantiated by supplying the State with the supporting documentation as required by paragraph 4.B of Exhibit A. The State agrees to make payment as promptly as fiscal procedures permit, subject to approval of the Contract Manager.

D. Invoices shall be submitted to:

Glenn Stober
California Business, Transportation and Housing Agency
Small Business Loan Guarantee Program
980 Ninth Street, Suite 2450
Sacramento, CA 95814

E. The invoice containing the final costs to be paid by the State shall be identified as the "final invoice." The final invoice shall be delivered to the State not more than thirty (30) calendar days following the Expiration of this Agreement. Payment of the final invoice shall be based upon completion of the following:

- 1) Satisfactory completion of this Agreement;
- 2) Compliance with paragraph 4 of Exhibit A; and,
- 3) Submittal to the Contract Manager of:
 - a) All reports and documentation required in this Agreement; and,
 - b) The Recycling Certification, as described in paragraph 10 of Exhibit C.

F. "Satisfactory completion" as used in this Agreement means that the Contractor has complied with all terms, conditions and performance requirements of this Agreement.

G. The State agrees to make payment as promptly as fiscal procedures permit, upon receipt of the invoice, subject to approval of the Contract Manager, and contingent upon satisfactory completion of the terms of this Agreement.

EXHIBIT B (continued)

3. INVOICING AND PAYMENT (continued)

- H. All payments received under this Agreement shall be used solely for the purpose of providing goods or services under this Agreement. The State shall have final determination of allowable and reimbursable costs under this Agreement. The State may require documentation substantiating expenses as deemed appropriate by the Contract Manager.

4. MISCELLANEOUS PAYMENT

The Contractor shall not use State funds allocated under this Agreement for any of the following purposes:

- A. Travel;
- B. Entertainment expenses;
- C. Professional dues for the Contractor's staff or officials; and,
- D. Purchase, construction, renovation, alteration, improvement, or repair of capital assets, such as real estate and vehicles.

5. PROMPT PAYMENT CLAUSE

Payment will be made in accordance with, and within the time specified in, Government Code, Title 1, Chapter 4.5 commencing with § 927.

EXHIBIT B
ATTACHMENT 1
BUDGET

CONTRACTOR FEE

1. The total Contractor fee for performing the services specified in Exhibit A of this Agreement shall be calculated [REDACTED] the assets held in the Trust Fund Accounts [REDACTED], including income that has been retained and reinvested, and shall be consistent with paragraph 4.B of Exhibit A. Payment shall be made pursuant to paragraphs 2 and 3 of Exhibit B.
2. The Contractor fee shall be calculated at the quarterly rate of [REDACTED] of the value of the assets, as that term is defined in paragraph 1, Attachment 1 of this Exhibit, in the Trust Fund Accounts.
3. The Contractor may withdraw a flat fee of [REDACTED] for [REDACTED] outgoing wire transfer request submitted by either the State or the Corporation. For incoming wire transfer deposits, [REDACTED] will be charged by the Contractor.
4. The Contractor fee provisions shall not be increased or decreased without an amendment to this Agreement.

EXHIBIT C
GENERAL TERMS AND CONDITIONS

1. APPROVAL

This Agreement shall be in full force or effect pursuant to the commencement date identified on the signature page of this Agreement.

2. AMENDMENT

- A. No variation of the terms or conditions of this Agreement shall be valid without a written amendment to this Agreement. No oral understanding or agreement is binding on any of the parties.

- B. The Contractor shall submit a formal request for each amendment, including a revised Scope of Work, Budget, and Milestones, if applicable, to the Contract Manager. Unless waived for good cause by the Contract Manager, all requests for amendments shall be received by the Contract Manager a minimum of seventy-five (75) calendar days prior to the expiration date of this Agreement.
- C. Amendments must be entered into prior to the expiration date of this Agreement or prior to the expiration date extended by other subsequent amendments.

3. ASSIGNMENT

This Agreement is not assignable by the Contractor, either in whole or in part, without an amendment to this Agreement.

4. AUDIT REQUIREMENTS AND RECORD ESTABLISHMENT, ACCESS AND RETENTION

- A. Should an audit by the State result in disallowance of funds previously disbursed to the Contractor, the Contractor shall reimburse all disallowed funds to the State within thirty (30) calendar days following the demand for reimbursement by the State. Failure to reimburse the State shall result in possible litigation, with the prevailing party entitled to reasonable attorneys' fees and costs.

EXHIBIT C (continued)

**4. AUDIT REQUIREMENTS AND RECORD ESTABLISHMENT,
ACCESS AND RETENTION** (continued)

- B. In accordance with Government Code § 8546.7, the Contractor agrees that the Contract Manager or designee shall have the right to review, obtain, and copy all records pertaining to performance of this Agreement. The Contractor agrees to provide the Contract Manager or designee with any relevant information requested and shall permit the Contract Manager or designee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this Agreement, Public Contract Code § 10115 *et seq.*, 8546.7, and, Title 2, California Code of Regulations § 1896.60 *et seq.* The Contractor further agrees to maintain such records for a period of three (3) years following final payment under this Agreement. In the event of an Agreement performance or payment dispute, the records retention period shall be extended until the dispute is resolved.
- C. Upon inspection, the Contractor shall promptly implement any corrective measures required by the State, its representatives or the Bureau of State Audits regarding the requirements of this paragraph. The Contractor shall be given a reasonable amount of time to implement said corrective measures. Failure of the Contractor to implement required corrective measures shall result in immediate cancellation of this Agreement.
- D. The Contractor shall keep all books, records, accounts and documents pertaining to this Agreement separate from other activities unrelated to this Agreement.

5. INDEMNIFICATION

The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

EXHIBIT C (continued)

6. RESOLUTION OF DISPUTES

- A. If the Contractor disputes any action by the Contract Manager arising under or out of the performance of this Agreement, the dispute shall be addressed as follows:
 - 1) The Contractor shall notify in writing the Contract Manager within fifteen (15) calendar days of the Contract Manager's action and request reconsideration.
 - 2) The Contract Manager shall issue a written decision within fifteen (15) calendar days following the receipt of the Contractor's notice.
 - 3) If the Contractor disagrees with the Contract Manager's written decision, the Contractor shall submit a formal request for reconsideration to the State's Deputy Director overseeing the Small Business Loan Guarantee Program within fifteen (15) calendar days of the receipt of the Contract Manager's written decision.
 - 4) The Deputy Director or designee shall issue the final administrative decision within thirty (30) calendar days of the receipt of the Contractor's formal request for reconsideration.
- B. The decision of the Deputy Director or designee shall be the final administrative review and shall be conclusive on the dispute at the State level. The decision by the Deputy Director may encompass facts, interpretations of this Agreement, and determinations or applications of law. The decision shall be in writing following an opportunity for the Contractor to present documentary evidence and written arguments in support of the matter.
- C. The Contractor shall continue with the responsibilities under this Agreement during any dispute until the Expiration of this Agreement.

EXHIBIT C (continued)

7. TERMINATION FOR CAUSE

- A. The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
- B. Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party.

8. CANCELLATION PROVISIONS

- A. This Agreement may be canceled at any time by either party in writing with thirty (30) calendar days advance notice. If canceled:
 - 1) The Contractor shall provide to the State, at the State's discretion, all work performed through the date of cancellation within thirty (30) calendar days of the cancellation date; and,
 - 2) Final payment shall be made to the Contractor only for performance and costs authorized up to the date of cancellation upon receipt of the final invoice.
- B. Notwithstanding paragraph 8.A. of this Exhibit, the State may cancel this Agreement verbally in whole or part and later follow-up with written confirmation, giving the Contractor less than thirty (30) calendar days advance notice if:
 - 1) Full funding is not available for all of the project work outlined in paragraph 4 of Exhibit A; or,
 - 2) Serious defaults in either the Contractor's performance or compliance with the terms of this Agreement are detected. "Serious default in performance" means the failure to comply with the terms and/or requirements of this Agreement.

EXHIBIT C (continued)

9. INDEPENDENT CONTRACTOR

The Contractor, and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

10. RECYCLING CERTIFICATION

The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code §§ 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, §§ 12161 and 12200. Contractor may certify that the product contains zero recycled content. (Public Contract Code §§ 10233, 10308.5, 10354)

11. NONDISCRIMINATION CLAUSE

During the performance of this Agreement, the Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code § 12990 (a-f) *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2 § 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

EXHIBIT C (continued)

12. CERTIFICATION CLAUSES AND DOING BUSINESS WITH THE STATE OF CALIFORNIA

The Contractor Certification Clauses and laws applying to persons or entities doing business with the State of California are included in Attachments 1 and 2, respectively, of this Exhibit.

13. TIMELINESS

Time is of the essence in this Agreement.

14. COMPENSATION

The consideration to be paid the Contractor, as provided herein, shall be in compensation for all of the Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

15. GOVERNING LAW

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

16. ANTITRUST CLAIMS

The Contractor, by signing this Agreement, hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes sections set out below.

A. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of § 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase (Government Code § 4550).

EXHIBIT C (continued)

16. ANTITRUST CLAIMS (continued)

- B. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder (Government Code § 4552).
- C. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery (Government Code § 4553).
- D. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action (Government Code § 4554).

18. UNENFORCEABLE PROVISION

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be effected thereby.

EXHIBIT C (continued)

19. UNION ORGANIZING

By signing this Agreement, the Contractor hereby acknowledges the applicability of Government Code §§ 16645 through 16649 to this Agreement.

- A. The Contractor will not assist, promote or deter union organizing by employees performing work on this Agreement.
- B. No State funds received under this Agreement will be used to assist, promote or deter union organizing.
- C. The Contractor will not, for any business conducted under this Agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- D. If the Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, the Contractor will maintain records sufficient to show that no reimbursement from State funds has been sought for these costs, and the Contractor shall provide those records to the Attorney General upon request.

20. FORCE MAJEURE

Neither the Contractor nor the State shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure." As used in this paragraph, "Force Majeure" is defined as follows: Acts of war and acts of god such as earthquakes, floods, and other natural disasters such that performance is impossible.

EXHIBIT C

ATTACHMENT 1

CONTRACTOR CERTIFICATION CLAUSES

By signing this Agreement, the Contractor certifies UNDER PENALTY OF PERJURY the following:

1. STATEMENT OF COMPLIANCE

The Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Government Code § 12990 (a)-(f) and Title 2, CCR § 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS

The Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- B. Establish a Drug-Free Awareness Program to inform employees about:
 - 1) The dangers of drug abuse in the workplace;
 - 2) The person's or organization's policy of maintaining a drug-free workplace;
 - 3) Any available counseling, rehabilitation and employee assistance programs; and,
 - 4) Penalties that may be imposed upon employees for drug abuse violations.
- C. Every employee who works on the proposed Agreement will:
 - 1) Receive a copy of the company's drug-free workplace policy statement; and,
 - 2) Agree to abide by the terms of the company's statement as a condition of employment on this Agreement.

EXHIBIT C, ATTACHMENT 1 (continued)

2. DRUG-FREE WORKPLACE REQUIREMENTS (continued)

D. Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and the Contractor may be ineligible for award of any future State agreements if the State determines that the Contractor:

- 1) Has made false certification, or;
- 2) Violates the certification by failing to carry out the requirements as noted above.

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

The Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a Federal court which ordered the Contractor to comply with an order of the National Labor Relations Board. (Public Contract Code § 10296) (Not applicable to public entities.)

4. UNION ORGANIZING

The Contractor hereby certifies that no request for reimbursement, or payment under this Agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.

EXHIBIT C

ATTACHMENT 2

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST

The Contractor needs to be aware of the following provisions regarding current or former state employees. If the Contractor has any questions on the status of any person rendering services or involved with this Agreement, the awarding agency must be contacted immediately for clarification.

A. Current State Employees (Public Contract Code § 10410)

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

B. Former State Employees (Public Contract Code § 10411)

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

C. If the Contractor violates any provisions of paragraphs 1.A and B. of this Attachment, such action by the Contractor shall render this Agreement void (Public Contract Code § 10420).

EXHIBIT C, ATTACHMENT 2 (continued)

1. CONFLICT OF INTEREST (continued)

- D. Members of boards and commissions are exempt from paragraphs 1.A and B. of this Attachment if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem (Public Contract Code § 10430 [e]).

2. LABOR CODE/WORKERS' COMPENSATION

The Contractor needs to be aware of the provisions that require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and the Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement (Labor Code § 3700).

3. AMERICANS WITH DISABILITIES ACT

The Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 *et seq.*)

4. CONTRACTOR NAME CHANGE

An amendment to this Agreement is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA

- A. When agreements are to be performed in the state of California by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
- B. "Doing business" is defined in Revenue and Taxation Code § 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

EXHIBIT C, ATTACHMENT 2 (continued)

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA
(continued)

- C. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the California Office of the Secretary of State.

6. AIR OR WATER POLLUTION VIOLATION

Under the State of California laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Water Code § 13301 for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

7. PAYEE DATA RECORD FORM (Std. 204)

The Contractor must complete the Payee Data Record Form (Std. 204). If the Contractor is a local governmental entity, the completion of this form is not required.

EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. EQUIPMENT

The Contractor shall not use State funds allocated under this Agreement to purchase equipment. As used in this paragraph, "equipment" means an article of nonexpendable, tangible personal property, including furniture, having a useful life of at least one (1) year and a unit acquisition cost of at least five thousand dollars (\$5,000).

2. ACCOUNTING REQUIREMENTS

The Contractor hereby certifies that its accounting system is in accordance with Generally Accepted Accounting Principles and practices, consistently applied, and capable of identifying all eligible and ineligible costs associated with this Agreement.

3. PURCHASE ORDERS AND SUBCONTRACTING PROVISIONS

- A. The Contractor is encouraged to take advantage of vendor discounts whenever possible and to utilize the services of small businesses, micro-businesses, and disabled veteran business enterprises when subcontracting for goods or services.
- B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.
- C. The Contractor is entitled to make use of its own staff and such subcontractors as are mutually acceptable to the Contractor and the State. All agreements between the Contractor and the subcontractor are subject to prior approval by the Contract Manager.
- D. The Contractor shall obtain three (3) competitive bids on each purchase order and subcontract over five thousand dollars (\$5,000) unless the Contractor justifies why three bids were not obtained. Purchase orders and subcontracts shall not be divided to avoid compliance with this requirement.

EXHIBIT D (continued)

3. PURCHASE ORDERS AND SUBCONTRACTING PROVISIONS (continued)

- E. The Contractor must obtain prior written approval from the State for any purchase order or subcontract for any supplies or services in excess of two thousand, five hundred dollars (\$2,500) to be paid for with State funds. The Contractor shall include in its request for authorization a copy of any subcontract and/or purchase order and all particulars necessary for evaluation, including:
 - 1) The necessity of incurring the cost;
 - 2) The reasonableness of the cost; and,
 - 3) Evidence of compliance with one of the following by the Contractor:
 - a) Obtained three (3) competitive bids and, of the most responsive, has selected the least expensive;
 - b) Selected the subcontractor based upon the Contractor's contracting procedures used for awarding subcontracts; or,
 - c) Has justified why three (3) bids were not obtained.
- F. All agreements with subcontractors shall contain all the provisions of paragraphs 5 and 11 of Exhibit C.
- G. Agreements with subcontractors that involve the expenditure of State funds in excess of ten thousand dollars (\$10,000) shall contain the provisions of paragraphs 4.B. and C. of Exhibit C.
- H. Agreements with subcontractors which include consultant services shall contain all the provisions of paragraph 4 of this Exhibit.
- I. Strict adherence to software license agreement(s) must be applied for all software purchased with State funds under this Agreement or supplied by the State. Proprietary software cannot be duplicated, modified or used on more than one machine, except as expressly provided for in the manufacturer's license agreement. Violation of the manufacturer's license agreement shall constitute grounds for cancellation of this Agreement.

EXHIBIT D (continued)

3. PURCHASE ORDERS AND SUBCONTRACTING PROVISIONS (continued)

- J. Any publication resulting from this Agreement shall include an acknowledgment of support by the California Technology, Trade and Commerce Agency. Except for scientific articles and papers appearing in scientific journals, materials must also contain the following disclaimer:

“Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the State of California.”

4. CONSULTANT SERVICES

In the event the Contractor utilizes the services of a consultant who provides professional or technical advice or a recommended course of action, the Contractor shall advise the consultant of the following:

- A. The Contractor shall advise all consultants of their duties, obligations and rights under Public Contract Code § 10335.5. In the event of a dispute between the Contractor and the consultant the matter shall be settled by an arbitrator mutually agreed upon by the Contractor and the consultant, and this requirement shall be added to all contracts for consultant services.
- B. The consultant's key personnel assigned to perform work under this Agreement and their level of responsibility shall be mutually acceptable to the Contractor and State.
- C. The consultant shall supply to the Contractor one copy of a resume for each employee and/or subcontractor who will exercise a major administrative, policy or consultative role on behalf of the Contractor. Each resume shall become an official attachment to the agreement between the Contractor and the consultant and shall be made available to the State upon request.
- D. The consultant shall provide a series of progress reports in the manner stipulated by the Contractor.
- E. Upon Expiration of this Agreement, the consultant shall submit to the Contractor a comprehensive final report and, if required by the Contractor or the State, schedule a final meeting with the Contractor or the State, and this requirement shall be added to all contracts for consultant services.

EXHIBIT D (continued)

6. EVALUATION OF CONTRACTOR'S PERFORMANCE

The Contractor is hereby notified that its performance under this Agreement may be evaluated within thirty (30) calendar days following the Expiration of this Agreement. The evaluation may include statements on the adequacy of the service or the product, whether the service was satisfactory, whether the service or the product was provided or completed within the time limitations, reasons for time or cost overruns, whether the product is operational or being utilized by the State, and/or the State plans for implementation, and the State's general impression as to the competency of the Contractor and its staff. The evaluation shall be filed in the State's official Contractor Evaluation File.

7. COMPUTER SOFTWARE

The Contractor certifies that she/he has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

8. DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION PROGRAM

- A. Pursuant to Public Contract Code § 10115 *et seq.*, the Disabled Veteran Business Enterprise Participation Program requires that all State contracts have a participation goal of three percent (3%) of the total contract amount to DVBEs for services, equipment and/or supplies. DVBEs must be certified with the Office of Small Business Certification and Resources to claim DVBE eligibility.
- B. The Contractor shall either:
 - 1) Meet the DVBE participation goal and submit certification of DVBEs to the State; or,
 - 2) Demonstrate a good faith effort to achieve the participation goal to the satisfaction of the State.
- C. DVBE Certifications and a good faith effort achieve the participation goal shall be governed by the standards set forth in Public Contract Code § 10115 *et seq.*, and California Code of Regulations, Title 2, § 1896.60 *et seq.* No substitution for previously certified DVBE subcontractors may be made without advance written permission from the State.

EXHIBIT D (continued)

8. DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION PROGRAM
(continued)

- D. In the event this Agreement is amended to increase the total Agreement amount, the Contractor shall comply with the requirement(s) identified in paragraph 8.B. of this Exhibit for the amended amount.

9. INCORPORATION OF PROPOSAL OR BID

The Contractor's proposal or bid is not attached hereto, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the Contractor's proposal or bid, this Agreement shall be controlling.

EXHIBIT E
RESUMES

Exhibit E, Attachment 1 consists of the resume for
Exhibit E, Attachment 2 consists of the resume for
Exhibit E, Attachment 3 consists of the resume for
Exhibit E, Attachment 4 consists of the resume for
Exhibit E, Attachment 5 consists of the resume for
Exhibit E, Attachment 6 consists of the resume for
Exhibit E, Attachment 7 consists of the resume for

[REDACTED]

[REDACTED]